

1  
2  
3  
4  
5  
6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9 RICHARD LEHMAN on behalf of himself  
10 and others similarly situated,

11                   Plaintiffs,

12                   v.

13                   WARNER NELSON; WILLIAM BECK,  
14 JR.; BRIAN BISH; KLAAS A. DeBOER;  
15 MICHAEL G. MARSH; ROCKY SHARP;  
16 RICHARD BAMBERGER; DENNIS  
17 CALLIES; CLIF DAVIS; TIM DONOVAN;  
18 HARRY THOMPSON; GARY  
19 YOUNGHANS; CLINT BRYSON;  
20 MICHAEL CHURCH; MICHAEL DOYLE;  
21 GREG ELDER; GLEN FRANZ; GARY  
22 GONZALES; CARL D. HANSON;  
23 PATRICK POWELL; GARY PRICE;  
24 SCOTT STEPHENS; ROGER TOBIN; and  
25 GRANT ZADOW, in their capacity as  
26 Trustees of the IBEW Pacific Coast Pension  
27 Plan,

28                   Defendants.

Case No. C13-1835RSM

ORDER DENYING JANUARY 23, 2018,  
MOTION FOR RECONSIDERATION

24                   This matter comes before the Court on Defendants' January 23, 2018, Motion for  
25 Reconsideration. Dkt. #123. Defendants initially asserted that the Court's Order on Plaintiffs'  
26 Second Motion for Summary Judgment includes manifest error by 1) holding that Mr. Lehman  
27 can be class representative for amounts under Amendment 24 to the Plan Document, and 2)  
28

1 holding that Plaintiffs were not required to amend their Amended Complaint. *Id.* On January  
2 24, 2018, the Court issued a Minute Order requesting a response from Plaintiffs. Dkt. #124.  
3 Plaintiffs filed their Response on February 7, 2018. Dkt. #127. On February 22, 2018, the  
4 parties filed a Stipulation which, *inter alia*, withdrew Defendants' objection to Mr. Lehman as  
5 Class Representative as set forth in Defendants' Motion for Reconsideration. Dkt. #129. The  
6 Court will therefore only address Defendants' second argument.  
7

8 Defendants believe it was error to rule on Amendment 24 claims without requiring  
9 amendment to the Complaint for a couple of reasons. First, Defendants argue the Court's  
10 conclusion that they "consented to judgment on amounts under Amendment 24 by moving for  
11 summary judgment" was "both a manifest error of law and fact" because "[t]he Trustees did  
12 not move for summary judgment on amounts under Amendment 24." Dkt. #123 at 6.  
13 However, Defendants acknowledge that they "made one passing reference to being entitled to  
14 summary judgment in their briefing while spending the vast entirety of their Response  
15 attacking the Plaintiffs' claim to summary judgment and judgment as a matter of law." *Id.* at 7.  
16 Defendants contend they were not requesting entry of summary judgment with this passing  
17 reference, and that they "were not even in compliance with the District Court's Local Rules if  
18 they were doing so." *Id.* Second, Defendants argue that the Court "holding the Amendment 24  
19 amounts were ripe for decision" was manifest error because it was "contrary to the Ninth  
20 Circuit's opinion" and the pleading requirements of Rule 8. *Id.*  
21

22 In Response, Plaintiffs argue the Court correctly found that "there is no procedural  
23 reason why a claim for damages under Amendment 24 cannot be before the Court now, after  
24 extensive briefing by the parties here and on appeal." Dkt. #127 at 2 (citing Dkt. #122 at 10).  
25 Plaintiffs argue that Defendants did request summary judgment in their favor, and that in any  
26 case, the Court's holding was manifestly erroneous.  
27

1 event “the posture and history of this litigation has already rendered the Class’s Complaint  
2 amended to include Amendment 24.” *Id.* at 7 (citing, *inter alia*, Rule Fed. R. Civ. P. 15(b)).

3 “Motions for reconsideration are disfavored.” LCR 7(h)(1). “The court will ordinarily  
4 deny such motions in the absence of a showing of manifest error in the prior ruling or a  
5 showing of new facts or legal authority which could not have been brought to its attention  
6 earlier with reasonable diligence.” *Id.*

7 The Court has considered Defendants’ arguments and finds that they fail to meet the  
8 high burden required for a Motion for Reconsideration. It was not manifest error for the Court  
9 to find “no procedural reason why a claim for damages under Amendment 24 cannot be before  
10 the Court now,” given the procedural history of this case, the Ninth Circuit’s ruling, Rule  
11 15(b)(2), and the case law cited by the Court. *See* Dkt. #122 at 10. Furthermore, it was not  
12 manifest error for the Court to conclude that Defendants “implicitly consented to addressing  
13 this issue by cross-motioning for summary judgment,” given that this was a reasonable  
14 interpretation of Defendants’ admitted passing reference to being entitled to summary  
15 judgment.

16 Having reviewed the relevant briefing, the declarations and exhibits attached thereto,  
17 and the remainder of the record, the Court hereby finds and ORDERS that Defendants’ Motion  
18 for Reconsideration, Dkt. #123, is DENIED.

19  
20  
21  
22 DATED this 26 day of February, 2018.  
23

24  
25  
26   
RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE  
27  
28